

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TODD DAVIS

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF CORRECTIONS, Dr.
JEFFERY BEARD, Secretary, Department of
Corrections, STATE CORRECTIONAL
INSTITUTION OF CHESTER, MARTIN L.
DRAGOVICH, Superintendent, State
Correctional Institution of Chester, Dr.
BENJAMIN ROBINSON, Medical Doctor,
State Correctional Institution of Chester,
OFFICER TERRA, PRISON HEALTH
SERVICES, INC.

Defendants.

CIVIL ACTION

No. 06-4952

MEMORANDUM

ROBERT F. KELLY, Sr. J.

MARCH 12, 2007

Presently before this Court is Plaintiff Todd Davis's Motion for Reconsideration of this Court's January 29, 2007 Order which denied his Motion for Leave to File a Second Amended Complaint. For the following reasons, Plaintiff's Motion for Reconsideration is denied.

I. BACKGROUND

On November 10, 2005, Plaintiff filed a Complaint in the United States District Court for the Western District of Pennsylvania alleging civil rights violations under 42 U.S.C. § 1983, and related state law negligence claims. Plaintiff's claims arise from an injury he suffered while he was an inmate at the State Correctional Institution of Chester. Defendants filed a Motion to Dismiss in response to this original Complaint. Plaintiff thereafter filed an Amended Complaint

in the Western District.

Defendants filed a Motion to Dismiss in regards to the Amended Complaint as well. They argued that dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) was warranted as Plaintiff had failed to state a claim for relief. Judge Arthur Schwab assigned this Motion to Dismiss to a magistrate judge for a Report and Recommendation. Magistrate Amy Hay issued a Report and Recommendation in which she found that the dismissal should be granted in part and denied in part. Judge Schwab adopted her Report and Recommendation in full on October 12, 2006. The parties then agreed by stipulation to transfer this case to the Eastern District. Judge Schwab signed the Order transferring the case to this Court on November 2, 2006.

In her recommendations, Magistrate Hay found that all claims contained in the Amended Complaint against the Commonwealth and its departments should be dismissed pursuant to the Eleventh Amendment. She also held that any claims brought against employees of these departments must be dismissed so far as they alleged violations committed by the employees in their official capacity. Magistrate Hay also recommended that Plaintiff's allegations of a denial of access to the courts and substantive due process violations should be dismissed as well.

The claims against Defendants Jeffrey Beard, Martin Dragovich, and Officer Terra posed problems. While the Amended Complaint clearly stated that these Defendants were being sued in their official capacities, it was silent on whether Plaintiff was suing them in their individual capacities as well. Plaintiff stated that his intention was to sue these Defendants individually as well as officially. Therefore, Magistrate Hay recommended that the claims against Defendants not be dismissed as to them individually. She noted that she expected the Plaintiff to seek leave to correct his Amended Complaint so that it specified the capacity in which he was suing these

three Defendants. Magistrate Hay thought the Court would likely grant Plaintiff leave to amend.

After the case was transferred to this Court, Plaintiff filed his Motion for Leave to File a Second Amended Complaint. On January 29, 2007, this Court denied Plaintiff's Motion after reviewing his proposed second amended complaint. While Plaintiff specified that he was suing Beard, Dragovich, and Terra, individually, he also reasserted the claims and the Defendants that Judge Schwab had dismissed. He was denied leave to amend because he went beyond merely clarifying the capacity in which he was suing these three Defendants. Plaintiff has now asked this Court to reconsider its January 29, 2007 Order denying his Motion for Leave to File a Second Amended Complaint.

II. DISCUSSION

"The United States Court of Appeals for the Third Circuit has held that the purpose of a motion of reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Cohen v. Austin, 869 F. Supp. 320, 321 (E.D. Pa. 1994). Accordingly, a district court will grant a party's motion for reconsideration in any of three situations: (1) the availability of new evidence not previously available, (2) an intervening change in controlling law, or (3) the need to correct a clear error of law or to prevent manifest injustice. Reich v. Compton, 834 F. Supp. 753, 755 (E.D. Pa. 1993). Federal courts have a strong interest in the finality of judgments, and motions for reconsideration should be granted sparingly. Continental Cas. Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995). Dissatisfaction with the Court's ruling is not a proper basis for reconsideration. Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993).

Plaintiff alleges that manifest injustice will result if this Court does reverse its Order

denying his Motion for Leave to File a Second Amended Complaint. However, Plaintiff has not advanced any reason why the Court should reevaluate what it has already decided. No new facts or points of law have been proffered. Plaintiff merely asserts the fact that Magistrate Hay did not dismiss the claims against Beard, Dragovich, and Terra to the extent that Plaintiff intended to sue them in their individual capacities. Plaintiff also highlights the fact that Magistrate Hay noted in her Report and Recommendation that she expected the Court to grant Plaintiff leave to amend his complaint to clarify the capacity in which he was suing these Defendants. These facts were already fully considered by this Court when it denied Plaintiff's Motion.

Plaintiff also believes that this Court misapplied the "law of the case" doctrine. That doctrine is a discretionary policy used by the courts to bring disciplined self-consistency to their decisions. Courts generally leave prior decisions made by a court of concurrent jurisdiction in a particular case undisturbed. 18B Charles Wright, Arthur Miller & Edward Cooper, Federal Practice and Procedure § 4478 (2d ed. 2002). Judges will refrain from re-evaluating decisions made by other judges in the context of a particular case. Plaintiff has failed to show how this doctrine is applicable here though. In the Order denying Plaintiff's Motion, this Court did not decide that leave to amend will not be granted. The denial resulted from the fact that Plaintiff went far beyond correcting the problems highlighted by Magistrate Hay.

This Court has not denied him the ability to submit an amended complaint that addresses the defects cited by Magistrate Hay in her Report and Recommendation. This Court is advised to grant leave to amend freely when justice so requires. Fed. R. Civ. P. 15(a). Plaintiff faces the very real prospect that his complaint could be dismissed if he is not allowed to amend to specify that he is suing Defendants in their individual capacities. However, the second amended

complaint that Plaintiff submitted went far beyond correcting the omission of specificity. He also reasserted previously dismissed claims and dismissed parties.

Plaintiff's assertion that he must reassert these claims (those dismissed on the merits) in order to preserve them for appeal is not accurate. The Third Circuit recently held that plaintiffs should be allowed to appeal dismissals despite amended pleadings that omit the dismissed claim provided repleading the particular dismissed claims would have been futile. United States ex rel Atkinson v. Pa. Shipbuilding Co., 473 F.3d 506, 516 (3d Cir. 2007). Under this decision, Plaintiff does not waive his right to appeal any of the dismissed claims when repleading the claim would be futile. "Repleading is futile when the dismissal is on the merits. A dismissal is on the merits when it is with prejudice or based on some legal barrier other than want of specificity or particularity." Atkinson, 473 F.3d at 516. The claims against the Commonwealth and its agencies were dismissed based on sovereign immunity. This "legal inadequacy cannot be solved by providing a better factual account of the alleged claim." Id. at 517. Plaintiff's reassertion of these claims is therefore futile. Additionally, these assertions do not cure the defects in the Amended Complaint created by Plaintiff's failure to specify the capacity in which Beard, Dragovich, and Terra are being sued.

Plaintiff has not shown this Court any reason why it should reverse its Order denying Plaintiff's Motion. Therefore, Plaintiff's Motion for Reconsideration is denied. Denial of this Motion should not be construed as a bar against seeking leave to correct the Amended Complaint in conformance with the recommendations made by Magistrate Hay.

An appropriate Order follows.

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ORDER

AND NOW, this 12th day of March, upon consideration Plaintiff's Motion for Reconsideration of this Court's January 29, 2007 Order (Doc. No. 14), it is hereby **ORDERED** that the Motion for Reconsideration is **DENIED**.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY, Sr. J.